

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6668 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASHOKKUMAR K LALWANI & ORS.

Versus

STATE OF GUJARAT

Appearance:

MS MITA R TALREJA for Petitioners
MR MUKESH PATEL for Respondent No. 1 and 2
None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/01/97

C.A.V. JUDGEMENT

1. The petitioners filed this petition before this court and prayed therein that the respondents, their agents and servants be prevented from disturbing and/or interfering, removing the petitioners from carrying on the occupation and also residing in the premises alongwith the family members situated between Canal & Roopali Dyeing Road, Nr. Narol Char Rasta within the

limits of Isanpur Gram Nagar Panchayat. The prayer has also been made for the grant of interim relief.

2. The petitioners have come up with a case that they are having their lorries, galls and small stalls on the kachcha road of Naroda Highway Road, linking Narol-Naroda near Isanpur Char-Rasta. On 2nd December, 1985, in the evening, the staff of the Irrigation Department, Chandola Vibhag, came in vehicle No.GRR 4645 and actually partially demolished a portion of the premises of the petitioners no.5 and 7. It appears that the petitioners were removed and the premises were destroyed on 5th December, 1985. However, the petitioners have not very specifically mentioned all these facts. The petitioners claim that they are small and petty self-employed persons who have been occupying the said premises for at least past ten years i.e. since 1975 as their residence-cum-business premises. It has further been stated that their names appear in the list of voters as well for number of years and Isanpur Gram Nagar Panchayat is charging taxes from them.

3. The reply to the Special Civil Application has been filed by the respondents. Alongwith the reply, the respondents have filed a site plan giving out details of the site. The Narol Branch Canal has been shown in this plan in blue colour. The encroachment made on the Canal Bank has been shown in purple colour. The respondents have come up with a case that the petitioners have made an encroachment upon the Government land by raising construction on 2-12-1985. When the petitioners have raised the construction the staff of the office of the Irrigation Department asked them to stop the impugned construction. The petitioners no.5 to 7 had started the construction and it has to be stopped. The construction was sought to be made on a bank of the Canal which runs from Chandola tank to Narol and Laxmipura. The land in dispute belongs to the Irrigation department and it requires the said land for stores and other materials which comes on cleaning of the canal. The respondent has stated that the petitioners have no right whatsoever in the land.

4. The counsel for the petitioners contended that the petitioners' construction were removed without giving notice or an opportunity of hearing. It has further been contended that the petitioners are poor persons and they are doing their vocation as well as residing at the disputed land for last many years, and as such, it is not in the larger interest to disturb them. However, the petitioners have not controverted the facts stated by the

respondent in the reply.

5. On the other hand, the counsel for the respondents contended that the petitioners have made an encroachment over the Government land, and as such, they have no right whatsoever to continue on the land. It has further been contended that the petitioners have made the encroachment only in the month of December, 1985 and they are not in possession since 1975. The petitioners are the encroachers of the Government land and as such, no protection should be granted to them by this court sitting under Article 226 of the Constitution of India.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The petitioners have failed to produce any material on record to show that they are in possession of the land in dispute since 1975. The only evidence which is on the record is the receipt of Isanpur Gram Panchayat but that is of the date 27th November, 1984. This receipt is only for one of the petitioners and not for all the petitioners. This receipt is of no help to the petitioners and it does not create any right, title or interest in the land admittedly belonging to the Irrigation Department. The Isanpur Gram Panchayat would have passed receipt to the petitioner, but it will not create any interest in the land of the Irrigation Department. The counsel for the petitioners is unable to point out any record to show whether the Irrigation Department has permitted the petitioners to occupy the land. It is true that under the interim relief of this court granted in the year 1985, the petitioners are in possession of the land, but that relief has been granted pending this Special Civil Application. Only on the basis of this interim relief, no right, title or interest of the petitioners is created in the land and that too at the cost of divesting of the right of the Irrigation Department. The petitioners have to establish their right to remain in occupation of the land which they utterly failed to prove. It is a case where the petitioners sought to raise the construction on the land of the Government, and as such, the Irrigation Department was perfectly legal and justified to take the recourse, the action to demolish that construction. The encroachers are the persons who take the law in their own hand and no protection can be granted to such class of persons. The land is needed for the use of the Irrigation department for cleaning the canal. It is a land on the bank of the Canal, and as such, no encroachment should have been made by the petitioners, and if such an encroachment has been made, it cannot be

allowed to continue. The plea of the breach of fundamental right under Article 14, 19 and 21 of the Constitution is not tenable in the present case. The petitioners are not in the lawful possession of the land in dispute, and as such, none of their legal and fundamental rights are infringed in case, the Irrigation department has taken the action to demolish the construction and remove the petitioners from the site. This writ petition is wholly misconceived and the same deserves to be dismissed. Order accordingly.

7. This Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted by this court stands vacated. No order as to costs.

zgs/-